**INDIAN PENAL CODE**

Q.1. What is the Penal Code?

Ans: It is central Legislation which classifier and definition of offends prescribes punishment therefore and provides for These Exceptional Circumstance where criminal liability do not arises.

Subject of Penal code is offence

Q.2. What is offence?

Ans: There are different concept of offence.

1. In any done against morality is offence.
2. Act against society is offence.
3. Legal concept of offence is the act which is expressly declared as punishable offence. This is done by penal laves only

Civil law do not creates offence.

**Hutti Singh:** Any law never become punishable law only because it is made penal law criminal liability when any person commits offence,

* What is basic of criminal liability how it arises.

There are mainly two principle applicable.

1. Principle of mens rea-
2. Actus reius.
3. **Mens Rea :** This term is coming from English criminal no one can be punished act without mens rea.

 To impose the criminal liability it is to be decide that act was done with mens rea. It is basic adminent.

However element of Mens rea is important, it is not used in Indian penal code.

The basic reason is that it is a narrow concept. It covers only particular state of mind of person only. That state of mind is related to revenge only not beyond that.

That’s why did not used this term in the penal code. They have used different term for this purpose to impose criminal liability.

1. **Intention:** It is not alone for ex. Intention to cause death.
2. **Motive:** Motivates a person and methodology is intention; where methodology is prohibited, that method is not legal, it is illegal.
3. **Knowledge:** Knowledge of result of act. Where a person does some act with knowledge of result.
4. **Knowingly:** Where a person does some act with intention and knowledge. He is said to be done with voluntarily.
5. **Specific Intention:** Dishonestly- A person is said to have acted, dishonestly when he does it with intention to causes.

Wrongful loss to someone and wrongful gain to someone.

1. **Fraudulently:** Intention to defraud fraudulently not otherwise, person is said to do fraudulently when he.
2. **Fraud:** Fraud is available in Sec-17 of contract.
3. **Negligently:** Causing death 304(A) breach of duty to take care.
4. **Rashness:** Criminal liability imposed.
5. **Actus reius:** A person can be punishing when acts that is done with mens rea.

When-no-act is done with mens rea, it is not punishable only with mens rea, if act not done.

Mens rea is primarily state of mind, and it is not proved unless such act is done by inspiring from such state of mind.

Q. What is needed – Q. what actus reius.

Ans. Means act which is declared punishable by law.

When act is done is violated of law such act is I legal but every act do not become punishable only on this act.

It must be declared expressly as offence.

Q. How can a offence be commited?

Ans. It is done by act and omission thereof.

Q. What is act?

Ans. Where doing something is prohibited by law, and it is done.

Q. what is omission?

Ans. Where law imposes duty to do something, non doing of that thing is omission.

**Offence:** offence can be done by single act or two or more act also similarly offence can be commited by single omission or one or more omission.

Offence can be done partly by act and partly offence omission.

Term offence may include.

1. **Preparation:** Collection of means to do something general rule is that preparation mere is into offence but where such preparation is declared as offence. For ex. Preparation to wage war against, GOI, dacoit.
2. **Abetment:** Encoveraging another person to do offence but under penal code. It is offence, it is declared separation punishable. It is not important whethere abetted person did such actor not.
3. **Conspiracy Criminal:** Conspiracy to commit offence is cri conspiracy. Agreement by two or more person to do that act offence.
4. **Attempt:** Intentional act, If it would have successful gives could have provided desired result.

Q. By whom offence is did?

Ans. Accng to kaning.

Q. Whether offence can be commited by legal person?

Ans. There are some which can be done. Ex. Definition E.Hulton vs Jones, Nuisance.

Q. Whether-two-or more person commits offence.

Ans. There are some doctrine to apply Joint liability two principle.

1. Rule of Joint Liability: Based on, theory of participation in offence.
2. Whoever intentionally participles in offence is liable for such offence.
3. Rule of constructive liability under this liability in imposed. Even due to presence. (149 IPC, 114 IPC)

Q. Against whom offence commited.

Ans. Against anybody but there must be injury or possibility thereof time of Injury, Extent is not material.

Q. Injury- What is Injury?

Ans. Term includes

1. Injury to body.
2. Injury to mind.

Causing Annoyand.

1. Injury to property
2. Injury to repetition.

**Operation of Penal Code:**

Q. What is operation of penal code and who can be punished in penal code?

Ans. Operation of penal code can be classified into a group they are.

1. Territorial operation (Sec 2) what operation of penal code within territory of India.
2. Extraterritorial operation (Sec 4)
3. **Territorial operation (Sec 2)**

What operation of penal code within territory of India.

Q. What is included in Territory of India four things are includes.

Ans.

1. Surface of Land included under interaction law.
2. Land Beneath the earth.
3. Sky over Territory of India.
4. Territorial sea up to exclusive economic zone.

Q. What is the rule?

Ans. Every person who commits offence within India is punishable by this code. Term every person includes Citizen of India and of any other countries person.

 If Foreigner enters Territories of India, then he is bound to lave of India, If he commits offence be punished within India.

 A Foreigner cart defend himself that he did not know law of India and because Ignorance of law is no excuse nor a non citizen can defend himself that offence done by him is not offence in his over country.

1. **Extraterritorial operation of Penal Code (article 245):** Law made by parliament are throughout India, It cannot be challenged that it has extra territorial enforcement.

**SC held:** Laws made sovereign can enforce the extra territorial law.

There are two basic laws rules.

1. If an India citizen goes beyond India and commits offence, he can punished under penal code.

Q. What is idea behind it?

Ans. When he goes outside (Citizen) he takes along with his luggage the Indian law (he is governed by India law)

1. If any person commits offence an any ship or aircraft registered in India. Where even such or aircraft may be such person may be punished in India.

Exceptions: Not Applicable in following cases.

1. Foreign Sovereign
2. Foreign Ambassadors: He is representative of foreign Sovereign that’s why penal code not applicable immunity available official capacity.
3. Foreign Ambassay.
4. Offices of International Institutions
5. Foreign Army: It foreign army pass in Indian Territory with permission of Government Indian our. Indian love not available.
6. Foreign man in warship.

There are some exceptions under constitutional law :-

1. President of India
2. Government of State

Similarly nothing which is done on floor of legislative is not offence.

**Sec-IPC- Section 76-106:-** General exception are provided in these section. To avoid repetitions of these sections 6 is incorporated in it.

General Exception are equally applicable to all offence covered in the code.

**Section 7:** Any term once explained in equally applicable throat this code until court explains some other interpretation particular.

**Section 8:** Male- includes female, female include male. (sec- 122)

**Section 9:** Singular includes plurals, and plurals includes single are unless. Otherwise provided in this code.

**Section 10:** Male means – Male human being of any age.

Word female-means- female, human being of any age.

**Section 11:** Person :- This word person includes any company or Association or body of person whether incorporated or not.

**Section 12:** Public :- Any group of people within specific class it is in generic term, includes group of people.

**Section 14:**

* Servant of Government
* Appointed, Employed, Continued
* To-do-a work on behalf of Government- is Govt-Servant-because Government is legal person but legal person only.

**Section 17:** Section 17 because there is federal system. That’s why State Govt. and Central Govt. both are include when any proceeding is instructed against Government of India.

 Union of India is mode party and if any force is instructed Government of India State is mode of party.

**Section 21:** Any person appointed or elected Authorized to perform any function provided in section 21 of IPC is public Servant.

**Section 22:** Movable Property-

1. Properties to be classified into two parts.
2. Following are included in the term immovable properties.
3. Land
4. Things attached to land. This land attachment may be of two type
5. Things growing out of land. Ex. Tree.
6. Things inserted into land.
7. Things permanently attached to such thing permanently. As soon as they are separated they become movable property.

**Noting:-** Indian Constitution office of profit.

1. President: 58(2)-59. President shall not any office of profit GOI or State controlled by State Government.
2. Vice President: Vice President shall not hold any officer of profit 66(4).
3. Members of Parliament – 102 Disqualification of LS member.
4. Section 103:- Disqualification of president.
5. Article 191:- Members of Legislature disqualification Governor has right.

Put following are not included in Immovable property.

1. Grass
2. Growing Crops : These are movable property.

Movable Property : Every property which is not immovable is movable but it must be corporial nature (ewrZrrk dk xq.k)

Q. What do you mean of incorporeal nature?

Ans. When a property a quivers the ownership & possession element than we calls it is. Incorporeal it is. Incorporeal nature, it becomes movable property.

 So long as Tree is an earth. It is immovable property. As soon as tree is cut cloven it becomes movable property.

* Bird and Animal, wild animal which are free by nature are not property.
* Pat Animal Tanned animals are property live stock.
* Fishes are property; but if incorprance.
* Electricity- not a subject of Theft-in-IPC, so far as electricity act concerned it is matter of theft.

**Section 23:** Wrongful gain and wrongful loss.

Gain- to get, to receive- The profit anything gains by person by lawful means than it is called. Lawful gain when gain is either by unlawful means than it is wrongful gain.

It is not material whether- The Person gaining known or not whether it is not lawful.

Western European rule-

 Thus wrongful gain means gain, obtained by person either by unlawful means and he is not entitled to have it legally.

**Wrongful loss:** - When a person is deprived of his property than it is said loss occurred to him but every loss is not wrongful loss. When a person is bound by law to make such payment loss can’t be deemed to be unlawful.

When a person is depend from his property by unlawful act or means the loss occur to him shall be known as wrongful loss because he is not legally bound to make such thing.

 It is not essential that if wrongful gain or loss occurred to someone but also wrongful gain occurred to someone.

**Section 24:** Dishonestly: A person is said to have acted dishonesty when he does it with intention wrongful gain to someone and wrongful loss to someone.

**Section 25:** Fraudulently: When is a person is said to have acted fraudulently.

Ans. A person is said to have acted fraudulently when he does it to defraud and not otherwise.

**Section 17:** Contract: of describes fraud it says when a person with inlenh

1. Knowing declared on true thing to be false.
2. Knowing declared false thing to true.
3. Keep silence where duty to speak.
4. Does anything which is declared by law a fraud and hence. It can be said it incase of fraud there is intention of fraud.
* Misrepresentation: In cases of misrepresentation statement is made honestly in good faith no intention to defraud.

**Section 26:** Reason to believe: The ground of reason to a belief is or med known as reason to believe.

**Section 27:** Property in Possession of wife servant clerk- It is said that property is in possession of that money.

 In matter of offence even if a caused is not present but possession of accused is not consider.

**Section 28:** Deals with concept of Counterfeiting: Concept of Counterfeiting is related to imitation copying one thing is made resembling with another.

 Act of Counterfeiting should be done with intention deception. When are thing is made resembling to another that with intention that deception thereby is caused, it is said it is counterfeiting.

It is not necessary that thing made by a caused is exact copy of original. It is sufficient by seeing that thing person is misled by consider it as original. In such cases text of reasonable and prudent man in applied and not extraordinary person a caused cannot defend himself that if such person would have taken same countries that he could have find the reality. Whether the copying is more beautiful/impressive than original, it is still counterfeiting.

 To punish a caused for counterfeiting mere making counterfeit is punishable, delivering is additional offence. It is also not necessary whether any person really accepted or not. Counterfeiting is done even by making allegation in original items. Coin, government stamp, currency notes and blank notes.

**Section 29:** Documents: Any matter expressed described upon any substance by means of letter figures, or mark or by mere than oral of these means indented.

**Section 30:** Valuable Security means: is basically a document, when does a doc. Become valuable security, a document creating, abolishing or extinguishing increasing, decreasing any right or durability, is called valuable security.

 To become valuable security it is not mandatory that document be executed each by two or more person.

* Decree of Court is valuable security.

**Section 31:** Term will has been defined means any testamentary documents.

Q. What is will?

Declaration of person that how his property will devolve after his death is known as will. According to Indian succession act will is to be written Registration is not necessary.

 In this section intention of forgery means only through written will not in oral will, that’s why special definition of will is lived.

**Section 32:** Term act includes omission also when he is prohibited by law to do something and he does it, such doing is called act done.

 Omission where person is bound by law to do something and he do not do that such non doing is omission.

**Section 33:** Term includes one or more act an offence may be commited by two or more than two types. Where offence is commited by two or more acts such two or more act be done by different persons.

 Similarly offence may not only commit by one omission but by more. Than omission also where offence commited by two or more omission such person may be diff. (offence done by partly act and partly by omission).

**Section 34:** Common Intention: Principle of Joint Liability

 Q. Why rule of Joint Liability?

Ans. When two or more person jointly commits offence,

1. The gravity of offence increase
2. Degree of Loss increase
3. They are assisting by each other in committing offence they protected by each other
4. Decision of committing offence is take back
5. It is difficult to prove what played role by which person. Each of them held equally liable.
* Section 114 &149 of IPC deals with the principle of constructive liability.
* Principle of Joint liability deals theory of participation in offence whereas rule of constructive liability deals with concept of presence of accused on spot of offence.
* Joint Liability: The rule of section 34 says that offence is commited by at list 2 person, although no. can be more than 2 but not less than 2 in any case. No should be more than 2 at the time of commission of an offence. End not during prosecution in court.
* Example: Suppose A & B Jointly commited an offence. B dies with after determine commission of offence now. A may be prosecute Section 34 IPC.
* Joint Commitment of offence is possible only when there is meeting of mind at the time of commission of offence. This meeting of mind is known as common intention without meeting of mind there is no question of common intention.
* There is difference both similar intention & common intention.
* Common intention may be constitute in any manner law does not pressure. Any particular or specific manner.
* It may be constituted by signs oral, wards, symbol, conduct etc. No formality is required to constitute common intention.
* Intention is always a state of mind, No matter whether it is common intention it is very difficult to prove State of mind.
* Two or more person can’t be prose & punished simple an basis of state of mind as it can’t be proved.
* Question of Liability: Arises only when there is common intention and they work in furtherance of it and commit offence.
* When two or more persons work jointly and commit offence. Then laws presume that they can’t commit offence without common intention so there must be common intention between them.
* Common Intention can be constitute at any moment. It is not necessary that there should be some gap between constitution of common intention and commission of offence.
* Common intention is constituted at any moment before the commission of offence.
* Participation: Here means that it should be taken in Liberal manner. It is not necessary that participation means actual participation in offence one may facilitate offence common for other so he is also equally liable.
* Participation in offence may be done. Even after commission of offence.

Q. Explain term, act done is further of common intention.

Ans. A,B,C planned to commit theft in D’s House while committing theft they were resisted by D’s wife, as a result. They gave her a violent blow due to which she laid unconscious on floor. In this case since the offence of grievous hurt was caused in furtherance of common intention and also because every one of them was aware of fact that it could happen in furtherance of co-intention.

* While in above situation C commits rape of D’s wife than, he is himself liable as it was not act which as it was not act which could be for seen. “Mahboob shah us Emperor”.

**Section 35:** Where a particular intention or knowledge is required for commission of an offence and such offence is commited by two or more persons jointly. It is presumption that every one of them had such particular intention or knowledge and everyone is lead for offence as if it was done by him alone.

**Section 36:** An offence may be done by partly by an act and partly by omission.

When law particular doing of an act and still it is done than it is said that person commited an Act. Where law imposes duty to do something such thing is not done then was doing is called omission.

**Section 37:** - It lays down concept of participation in an offence.

* Term participation do not mean during participation by all person at same time i.e. at time of commission of offence.
* Doing part of an act is also participation in that offence.
* Partly doing an act by one person partly doing an act by another person- constitutes offence.
* Partly doing an act by one person and partly omission by another person constitute offence.

**Section 38:** Is an exception to section 34 as per section 34, two or more persons commit an offence in furtherance of their common intention and all such are equally liable.

Such person may be liable differently also according to section 38. From illustration given in section 38 it can be said that responsibility for person concerned in commission of offence may be different. In Illustration it is made dear that while both A & B are engaged in commission of causing death of Z then liability is far diff offences.

**Section 39:** Voluntarily: When a person does something with intention or knowledge, he is said to have acted voluntarily, i.e. when he does it knowing result and consequences of act.

Section 40: Offence: It is part of penal code.

The definition of offence given in section 40 is part of code. It doesn’t deal with special legislation or law.

Any act which is punishable under this code is an offence.

* Any act or omission which is declared as an offence by law or is punishable under law is an offence.
* Any act in relation to penal code any act or omission which is punishable under IPC, 1860 is an offence.
* Special law: On the basis of subject law may be classification into 2 group.
1. General Law
2. Special Law

**General Law:** It is applicable to all without any distinction an eg. IPC & Crpc.

**Special Law:** These are laws, which are applicable to specification particular intention subject. Eg. Prevention of corruption Act, of trifling in human being.

Adulteration in foods acts during and commodities act. If there is in consistency in general law and special law, special law prevents over general law.

**Section 42:** Local Law: On basis of the area law may be divided into two categories.

1. **National Law:** It applies to the whole territory of nation, laws made by parliament or Central legislation are generally. National laws unless otherwise specified parliament has poueit make laws which are applicable to either whole of India & territory or any particular part of territory of India.

Article 245 Constitution says that law made by parliament have their extent thought territory of India.

1. **Local Law:** Second group law is known as local law, means those law. Which have their application within specific territory of India.
* Laws made by state legislature are known as local laws.
* Laws made by state legislature have their extent or operation within territory of that State.

**Section 43:** Illegal means an act or offence prohibited by law. It may afford ground for civil action or creates civil liability on a person.

* It may also create criminal liability because it may be an offence.
* Every offence: Is the illegal act but every illegal act is not an offence, because offences are. These act which are specifically declared by law as punishable offence.
* Legally bound to do: A person is bound by law to do something when its omission constitutes illegal act.

**Section 44:** Injury: When illegal Injury is caused to person it constitutes offence and creates harm caused in mind body and reputation or population.

1. **Assault**: Any gesture or any preparation intending to cause to any person to believe that criminal force is about to used by person making that gesture or preparation.
2. **Hurt:** Causing bodily pain, disease or infirmity to a person is known as hurt. Hurt is mental Injury.
3. **Injury to Property:** When a person is derived of his property for unlawful means, Injury resulting to this is known as Injury to property.
4. **Injury to Reputation:** when offence of defamation is commited, result is Injury to reputation of aggrieved person.

Defamation means publication of false statement against a person which makes him an object of hatred or ridiculed in the eye of other people in society.

**Section 45:** Life: Means life of human being or living person. The concept of birth begins. If death of child in the womb of mother is caused it is neither murder nor homicide because concept of life does not cause here but where any part of body a child comes out & then you cause. Its death such death comes under culpable homicide or murder because concept of life is applicable.

**Section 46:** Term death means death of human being; wherever this term is used it means death of human being.

Q. Whether death of a dead person be caused?

Ans. No,

When death is caused of a person who is in state of Unconsciousness it is deemed as murder because state of unconsciousness comes within the preview of life so it is offence.

**Section 47:** Animal: Any living been which is not human being comes under category of animal.

Q. Whether causing death of an animal is an offence?

Ans. The general rule is that offence is always caused against the human being and not against animal so unless and otherwise provided by law, causing death of any being other than human being is not an offence.

* When any being comes within the term of live stock and as livestock they are part of property of a person, so if Cow of X is killed it is an offence because cow is the property of X and so it is Injury to that property.

**Section 52:** Good Faith: Law impose duty upon every person to do his act with due care and attention this is general rule, when a person does act with due care and attention he is said to do in good faith but care and attention depend upon various factors.

1. Facts and Circumstances of case.
2. Time and condition.
3. Nature of Place.
4. Does of Act.

If a person does not do his act with care and attention it is said that is doing it with negligently or rashness mannered doing of an act with these.

Element may create criminal liability of person, in case it result into Injury to same person.

* **General Exception:** IPC is a Central Legislation. It classification offence, defence and prescribe punishment and condition in which liability of criminal person arises and exception where liability do not arises.

There are two type of exception.

1. General Exception
2. Special Exception

The exception available under section 76-106, are known as ‘General Exception’ because of nature itself.

 In this relation section 6 IPC says that these exception are applicable to all offences under penal code.

Q. What are basis of these exception?

Ans. Absence of element of mens rea. It creates criminal liability- two things required.

1. Mens rea 2. Actus Reus

 When there is actus reus without mens rea, even if act is done and declared as offence by law, criminal liability can’t be imposed because said act was done without mens rea.

* It is accused who demands benefit of exceptions so burden of providing presence of exceptional condition lies upon him (Section 105 Evi. Act)
* It must be proved that, circumstances constituting offence were present during commission of act (Neither before nor late).
* Rule of preponderance of applies in such case.

Q. Whether defense on part of accused is necessary to prove exception?

* In this relation there is diff beth.
* It is duty of prosecution to produce all evidence whether such Evi. Is in favour of accused or against the accused. If after case, count find that case of accused is being covered by these exception benefit of exception may be given by court to him defense even if he didn’t raise objection on basis of offence.
* The General exception provided under IPC may be exhumed under following heads.
1. Mistake as a State of mind.
2. Mistake may be classifies into two categories.
* Mistake of Law
* Mistake of fact.

**Mistake of Law:**  It means Ignorance of Law.

Q. The basic question is whether a person can defend an basis that he did not know law?

Ans. No, He can’t be allowed to defend on this basis becaus3 in this relation basic law is “Ignorance of law is not an excuse”.

It is not material that who did the person doing the act may be citizen, non citizen, and foreigner.

Section 76 & section 79 are not applicable in relation to mistake of law but to mistake of fact.

* Mistake of fact is mis conception about circumstances of case or mistake in relation to facts of case, it is primarily commuted with power of perception of the person.

Q. When provision of section 76&79 are applicable.

Ans. Section 76 is applicable when a person is bound by law to do or he is presumed in good faith that he is bound by law to do something.

* Section 79 : It is applicable only when a person is justified by law to do something or he presumes himself justified by law to do something. Whether a person is bound by law to do something u/s section 76 or justified by law to do something u/sec 79 and in both cases act is done by in good faith.

 If he didn’t do his act in good faith he is not entitled to benefit these exceptions.

* If a person does act under malice then even when he is bound by law or justified law. He is not entitled to get the benefit of these exception.
* Benefit under section 76&79 is available when there is mistake of fact while doing act.
* When a senior officer orders the subordinate Junior officers to do. Something, the order has force of law so the sub officer is bound by law to execute such orders. But the such officer known that order is illegal in itself and he has no authority to give such order i.e. order is prima facie illegal and yet executes order he can’t defend on ground that he was bound by law of execute such order.
* Judicial Act: Primary function of judiciary is adm of Justice, and functions of adm. Justice is judicial function.
* The provision of judicial function is not also applicable to ouasi Judicial bodies i.e. Tribunals.
* The act should be done in exercise of power conferred of law.

**General Exception:**

**Section 78:** Execution of order nothing is an offence which is done is execution of order public authority or court order, done in good faith and without malice.

Section 83: Court has power to order attach property. If such order is executed, attached, whether it is illegal because,

1. There is good faith during execution and there is absence of element of malice, so it is not offence but,
2. Such court or officer must have power to give such order and even if there is no such power person executing must believe that he has such power.
3. Search warrant by mgst etc.

Section 80: Accident: Result of some act which happens abruptly and which is out of central of person doing that act these 3 test should be followed.

Section 80 accident act of vis major no liability in it (act of God) but defence on ground of accident benefit is given only when.

1. Act done is lawful.
2. Act done with lawful means.
3. No intention to cause Injury.
4. Element of good faith in doing the act.

The act of person

1. Out of Control
2. Sudden act.

Section 81: Risk to cause lessen harm to prevent major harm. Sometime to prevent harm, person has to do immediate decision and in such cases person may be cause risk of harm to major extent.

* Wastes European country max age is fixed at 12, where at other places it is 14, India it is 7 year. That’s why question arises whether such risk is justified or not when a act is done without the intention of damage, hurt, than criminal liability do not arises.
* The of question of fact whether be reasonable and froudentment so such question to be circumstances of case discussed by facts and not of law.

**Section 82:** Acts of child: nothing 7 year is an offence 83 which is done by child because of there is no element of mens rea in mental standard of child. So child is not capable of doing offence. “Dolly In capes”

Nothing is an offence which is done by child of age below 7 years. Such exception of absolution degree of immaturity should be to such extent that child is unable to know the nature of his conduct consequence nature because in only section on one thing to be decided.

Knowing the nature of at time of doing the act child was below 7 year marriage for the conferring age records to send to the radiologist. Who estimates age on basis of the development of bones. In matter of Jouriala vs J&K SC held opinion of radiologist vary for 2-4 years.

In such cases beneficial construction is made in favor of accused.

**Section 83:** Child not below 7 years but under 12 years of immature understand but it is not conclusive proof. It is conditional exception, two grounds to be taken, if defense made according to 83;

1. Age of child.
2. Providing State of mind of child mental immaturity it must be proved that m.m. child was not in ptn.of knowing consequences of his act.

This fact to be proved, that an account of mom. Child under was not understanding nature of his action and consequence.

Q. How to decide accused child is mentally not developed- fact and circumstances it is to be decided but in all cases behavior is noted.

What was act of child before doing and another is question of fact.

**Section 84:** Act of person of unsound mind basically it is a disease and there may be so many reasons, but law do not take care from where how insanity occurred.

1. Result of accident, Invited by itself also continuous in taking of Toxicants.
2. There is difference between medical and legal Insanity. According to medical scent slight mental disturbance is also, unsoundness of mind. But eye of law, only these person are degree of insanity so high that such person who are not able to understand the consequence of their act.

Medical science concernuats fact legal is to higher nature.

1. Insanity must be in existence during commission of offence. Exception is only given when it is proved that while doing.
* Medical text not to be applied in such case test by law should be only prescribe.
* Law do not prescribe – any rule that state of insanity persist for specific period. Only thing is that person must be of unsound mind at time of offence act. He was not in ptn, knowing consequence, it is also not important for devation.

Ex. Epilepsy –

Woolmington case – act done by such ruling not app in India. Section 85 & 86 intoxicated person nothing is an offence.

Q. What is intoxication ?

Ans. Effect on mind by consuming any intoxicant. Act done by an intoxicant person is not offence but this is not absolute rule provided that.

1. Intoxication was not voluntarily
2. A person can’t defend if he consequence voluntarily. or Intoxication was without knowledge.
3. And intoxication was so high that an account of intoxication person was not capable to know consequence of his nature of work done.
4. Defense to intoxication any when above 3 condition to choose. No universal rule of degree of offence no. rules made alone to it. Its also not question within.

Section 60 so they fix to be decided by all character and this copy written. To decide in each character, behavior of mis name should be taken.

**Section 86:** It is like explanation to section 85 where particular intention is needed to prove. If there is mens rea a person can be punished in relation to some offence special intention is needed. For ex. Theft – dishonestly, Fraud – Fraudulently

Section 86: Where special knowledge or interest is request to do an act and even if there is no particular knowledge and intention at time of doing an act an account intoxication. Then law presumes that act was done with particular knowledge or particular intent. Exception is availability only-

1. Intoxication was not voluntarily.
2. Without knowledge.
3. Degree of intoxication high that person does not know nature & consequence of Act.

**Section 87:** Voluntary non-fit Injuries.

**Section 88 & 92:** Act for benefit of person in eye of law when act is done benefit of person criminal liability do not arise.

Q. What is meant by benefit?

Ans. Term benefits means saving life of person, curing disease curing infirmity.

Q. Where act is done for benefit of person?

Ans. It must be with consent of such person.

1. If we act by itself is illegal mere consent do not make. The act lawful. Ex. Abortion.
2. Only that act to be done for which consent was given.
3. Consent of such person must be free. If threat fraud, misconception, indiuence- mistake- it is no consent.
4. Person giving consent must be complete person to give consent.
5. Act must not done with intention to cause death or grievous hurt act be done in good faith.

Child be law 17 year of age, and unsound mind person are not capable to give consent.

If such person for whose benefit the work is to be done is incapable of giving consent, act may be done by taking consent of his/her parents.

Q. Who can be Guardian/

Ans. Four type of All.

1. Natural – Father, Mother.
2. Testamentary guardian
3. Guardian by court.
4. Adhoc-Guardian.

While doing act person who has possession over other person.

* There may be situation who obtaining consent is not possible.
* There is no person form whom consent is given then act can be done without consent of also.
* There should be no intention or knowledge to cause death or grievous hurt. Law do not causes any person to cause his death.
* Euthanasia :

 - Act must be done in good faith.

 - Act to be done with due care – on- attention.

**Section 93:** Communication made in good faith such communication must be true communication be not made. If there is any loss accrued due to such communication than informer is not liable for any damage.

**Section 94:** Act under threat: General rule is that a person is liable if he does act voluntarily; and it means he does with intention and knowledge. Knowledge of result of that act, so where he is compelled to do that and he is doing it he is not said and he is doing it he is not said to do it voluntarily, when a person does act under such compulsion so he is not liable for his act, but this rule is not absolute nature, it is conditional two things required to be seen.

1. Threat of what
2. What act was done under threat?

Conclusion of Section 94:

1. Threat of what section 94 says threatening must be of death (2), it veatenun must be of such nature as instant death’s danger occurred.
2. Section 94 threatening must be to death person, who is compelled to do act, so far as literal interpretation language of this person means threatening must be to death person who has to do work (sec 94) but law commision of India threatening must be to any other person also and there must be close reation both them.
3. What acts to be done under such circumstances? Under such threatening any act can be done but section 94 does not permit offence of murder & but section 94 tonight if given to commit any crime. Section 94 does not give permission to do that which is offence above 18 years and or offence punishable death by state. Exception to the sec 94 do not gives, where self mazboor, causes death of any other person or causes any offence against state who is punishable with death.
* Reason law do not recognize in case to take away life of another person to protect the life of are self. Law do not recognize it.
* Offence against death punishable no benefit, because interest of nation is high that inter set of peoples. If there is conflict but two, then only state benefit be given by the interest of session. Every national is sacrificed that for his destruction college is refavored. Section (121) so nobody can defend.

Exp I – If a person engages himself voluntarily he can’t take ground that he was compelled to do that.

Exp II – Smith

**Trifling Offence**

**Section 95:** Slight are some act are of, Trifling act in relation to which no reasonable and prudent man not make any complain no prospection.

1. Right of private defense.

Q. Why right of Pod?

Ans. Duty to protect person & property is of govt. if there is no time to approach to public authorities than person is empowered to protect themselves nature has given unique virtue to everybody to protect themselves and this is available to person also virtue of saving itself is natural right that’s why right of private defense.

2 Right of private defense available in two things.

1. Defense of body – not of himself but other’s body and such other person may be known person unknown may be known person unknown person.
2. Defense of property not only relation to own property but also other’s property may be private property and public property and such property may be public & private property.

Q. When to use and what’s extent to use it?

Ans. In this relation some norms are established by law;

1. Right of private defense can’t be use danger must be instant and clear when damage is present and there should be no way out to escape except private defense.

 Case of Caroline when there is danger, and no way out only.

1. When there is apprehension of danger and time, assistance of adam be taken and when assistance is made available then no need of using private defense.
2. RVS Dudley: Court held there is diff beth self-preservation and right of P.d. Self-pres- to kill one person to save own life. It is not recognized. Right of P.D. means when there is danger to any property means it available to assailant not to innocent. So right of p.d. is not right of presentation
3. Right of P.D.is available to assailant not innocent and also against whom themselves who are not complete to commit offence.
4. Right of P.D. can’t be exercised against lawful act even if loss accured to one. When public authority does anything and loss accursed no right of p.d. is available. However when there is oppression of death and grevious hurt right of p.d. is available.
5. Polius - case –no – agravice action not permit in the exercise of right of p.d.
6. Primary purpose of p.d. is to save one self and not to cause death of assailant. Death can’t be caused (of assistant ) but can be only when law allows to do so (sec100-103 of IPC)
7. Since purpose is to save one self only such force must be used which is necessary to protect. If excess force is used for such excess liability arises.
8. In exercise of right of p.d. risk of causing injury to some, stronger person to be taken of course in good faith.
9. Right of p.d. evokes, when danger arises and it causes when danger ends.

**General Exceptions:**

**Section 96:** Nothing is an offence if done in exercise of right of private defense prescribed within limit prescribed by law.

**Section 97:** Right of private defense is available to 2 things (1) body (2) property.

1. Right of private defense of body is to be taken for his body and also of ther person’s body and also for other person’s property, such property may be public property a private property.
2. Offences against property mean offence of theft robbery dacoity trespass mischief or attempt.

**Section 98:** Right of private defense is available against assailants who are not competent to commit (person of unsound mind)

**Section 99:** Cases where right of private defense is not available.

1. Where a public servant/authority does any act under colour of this office then right of private defense is not available but if due to that act there is apprehension of death or grievous hurt, right of private defense can be exercised.

Exp I: where a person executes order of public officer than right of private defense is not available against such act but where there is reasonable apprehension of death. Right of p.d be exercised.

Exp II: so long as person do not know the does of act is public officer or person executing order of p.o he can exercise right of private defense against him.

If there is time to have recourses to get the assistance of administration one mut seeks assistance and no right of p.d. is allowed.

Only that much of force to be used which is sufficient to defend not more than that.

**Section 100:** These condition due to which death of assailant may because in exerase of right of p.d. of body-

1. Rape 2. Death 3. Grievous her 4. Unnatural least 5. Kidnapping
2. Wrongful confinnent

Law do not recognized witch craft.

**Section 100 (6) :** Is of conditional nature, victim is restricted to remain at particular place and not allowed to movement if confinement is such that he is not able to call upon public rities, if detained person believes that he is not able to have the recourse to P. Authority he has right of p.d.

**Section 101:** Death of Assailant be caused in the exercise of right of private defence when condition existed in sec 100 are present, if none of such condition is in existence than no death caused but any other harm may be caused.

**Section 102:** when danger start beyond control right of p.d. increase. It si not essential for that assailant cause any harm mere reasonable apprehension is sufficient.

**Section 103:** Relating to private defense of property under some of private defense of propert extends to death of assailant.

 In such condition causing of death is justified – Robbery, House breaking mis chief by fire, theft mis chief.

**Section 104:** Death can be caused of assailant if situation falling under sec 103 is available but if it is not so then death, can’t be caused but any other harm can be caused.

**Section 105:** Commencement and continuance of right of private defense of property right of p.d. of property commences when reasonable apprehension of danger to property commences. It continues till offend effected his retreat with the property or either assistance of public authority is obtained or it has recovered.

**Section 106:** Right of private defense against deadly assault when there is risk of harm to innocent person than right of private defense extends to running of that risk.

**Abetment:**

Basics term offence in penal code do not include action any but prior to the commitment of offence there may be activities like conspiracy, attempt, abetment because they are declared as punishable under the code.

Abetment means – Incitement of offence

Q. What is incitement of offence?

Ans. To encourage one person by another to commit offence in eye of law is called as incitement.

* Law has declared abetment as spate and independent offence.

Q. How can abetment be done?

Ans. In any of following ways:

1. By instigation
2. By taking part in conspiracy
3. By intestinally aiding.

Q. What is Instigation?

Ans. Encouraging a person to commit offence by words whether oral or written is known as instigation.

* Such words may be express or implied.
1. Willful concealment of fact may amount to instigation and useful telling of false fact may also amount to instigation, where there is duty of speak silence may amount to instigation.
2. By conspiracy: Conspiracy means agreement between two or more persons to do an a unlawful actor an unlawful act by illegal means conspiracy is converted into criminal conspiracy when act is done is further any of such conspiracy.
3. By intentionally Aiding: May be direct or actor indirect act abetment is also possible by fasicilating far – offence.
* Person who is encouraging is known as better and who is encouraged is known as abetted.
1. Who can be a better?

Ans. A better is person who is competent to do so, a person who is not complete to do offence can’t be a bettor.

* But abetted person can be any person whether he is competent to commit offence or not abettor can’t defend himself that abetted was not competent person.

Q. Whether abettor is liable only when offence is done?

Ans. As soon as there abetment is done, offence of abetment completes even if abetted person do not commit offence on account of such abetment, abettor is liable since abetment is separate and independent offence and hence abetment is also offence.

* Place of abetment: Must be neither India, it is no material whether offence is commited within/without India, even if abetted offence is to be done beyond India, abettor is liable because it is separate and independent offence.

Liability of the abettor: In this relation following pts. to be kept in mind.

1. Abetment is independent offence and abettor is liable evenif abetted offence is not done.
2. Abetment ifself creates the offence.
3. The abettor can’t defend himself on ground that abetted person was not competent to commit offence. Whether abetted act was done or not liability is there.
4. When abetment offence is actually done by abetted person. Than liability of abettor increases.
* When abetted offence is commited and there is expresss provision of punishment thereof in IPC. Then abettor to be punished with that punishment.
* Where abeeted offence is commited and there is no provision of punishment in IPC, then abettor is punished with that punishment which is prescribed for that offence
1. The abettor is liable even if the abetted person done the offence to any other person or other property. A instigates B to commit murder of C.
2. Abettor is liable evenif the abetted person is not competent person. Where incompetent person is instigated to commit offence and he does so, we will understand, that such inc person was used as medium/tool by abettor.
3. Abettor is liable even if the act was done with different intention by abetted person.
4. Abettor is liable even if the abetted person done act with diff. knowledge.
5. Q. Whether abettor is liable even if some additional work done by abetted person in furerance of such abetment?

Ans. If such act was predicted time of abetment, then abettor is liable for such act also. On the other hand, if result could not be for seen at time of abetment than for such result abettor is not liable.

1. When abetted person commits abetted offence and abettor is present actually there, the abettor is liable as the himself commited the offence. (rule of constructive liability)
2. When more than 10 person or public abetted to commit offence, the abettor may be punished with additional punishment.

**Section 107:** Provide meaning of abetment when person does with.

1. Instigates.
2. Taking part in conspiracy- provide some act done in such conspiracy
3. By intentionally aiding.

Explanation : 1. Instigation means- by words.

1. Abetment be done by willful concealment.

When any act by which commitment of offence is facilitated that amount to aiding of offence.

**Section 108:** Abettor – Person who abets the offence. He is only that person who is capable of commit offence.

* Exp. 1 whether abetted offence is not commited, there also.
* Exp. 2Abettor is liable even if desired results are not obtained thrown such abetment.
* Exp.3 Even if abetted person is not competent than also abettor is liable.
* Exp. 4 Abetment is separate offence in depend offence.
* Exp. 5. Where by offence is done by conspiracy it is not essential that person takes participation in actor not.

**Section 108A:** Where there is abetment in within India it is not material where it is to be commited within/without India in other words abettor is liable even if abetted offer is done out of India, he will be punished as he did it in India.

**Section 109:** Where abetted offence is done than in such cases, there are rule to fix liability. Either punishment definition abetment or of offence its.

**Section 110:** Whether abetted person does act without diff. intention from that of abettor liability is same.

**Section 111:** Liability of abettor: when act is done alo0ng with some additional act. Those if that add act is probable consequence of such act abetted than he is liable in same manner as he also abetted add act.

**Section 112:** When any distinct offence is commited apart from abetted offence. Than abettor can be held liable for both the offences.

**Section 114:** Abettor present when offence is commited abettor laible as he himself commited offence.

**Section 117:** Where more than 10 person or public is abetted to commit of fence. Than he is liable to punishment of description of term extents 3 year or fine both. It is addtn. Punishment according to Ratanlal.

When there abetment and its consequence no offence is commited it what is liability of abettor.

**Section 115:** where there is abetment of offence punishable with death or important of life and in consequence thereof nothing is done.

1. If there is specific provision of punishment in IPC. Abettor to be punished with that punishment.
2. If there is no specific provision in penal code abettor to be punished with important of 7 year and fine also. (sec 121).

**Section 115 (2):** Where there is abetment of offence – punishable with death or imp. of life and hurt also punishment of 14 years caused and liable to fine also.

**Section 116:** Where there is offence is abetted is punishable with imprisonment and in consequence of that nothing is done than following are rules relating to such abetment.

Rule 1. Where there is provision in penal code for punishment express in penal code. Abettor to be punished with that punishment.

Rule 2. If there is no punishment in IPC for such abetment. Than ¼ of imprisonment prescribed for that offence be given to abettor but fine will not be reduced.

Para-II 116: Where there is abetment of offence- punishment with important and abettor is public servant whose duty is to prevent such offence then following are rules relating to abetment.

1. If there is any punishment in penal code for such abetment. Abettor to be punish with that punishment only.
2. If there is no provision of punishment in penal code; in that case abettor to be. Punished with ½ of the punished for that offence or fine or with both.
* In case offence punishable with few
* If there is abetment of an offence punishable with fine and in consequence of such abate offence is done law under section 109 to apply and if no offence in consequence of such abetment, than law do not prescribe any punishment.

**Criminal conspiracy: 120A & 120B**

**120A: Conspiracy:** what do you mean by conspiracy?

Ans. It is consenses, or agreement both two or more person to do some unlawful act, or to do lawful act by unlawful means. Where two or more person agrees.

* For conspiracy: There is need of minimum 2 person, one person can’t do agreement with himself only.
* When say that there is agree than they must be consent. If two or more person meet at one point in one sense. There must be meeting of mind for cr. Conspiracy.
* Term consent here means person. Competent to make consent.
* A person of unsound mind do not know consequence his act is not competent to give his consent.
1. Civil wrong also under law of tort.
2. Conspiracy as an offence criminal conspiracy.
* Concept of conspiracy: conspiracy if there is agreement to unlawful act not amounting to offence, and if any act is done. It is mere civil wrong or tort.
* Criminal conspiracy: where conspiracy becomes criminal conspiracy.
1. When conspiracy to commit an offence prima facile criminal conspiracy and in such cases. It is not necessary that something to be done. (offence)
2. Where there is conspiracy for unlawful act and in consequence of such conspiracy offence is done. Conspiracy becomes criminal conspiracy.
* When there is conspiracy to commit offence such conspiracy itself called criminal conspiracy criminal liability arises when such agg. to convict it is not essential that offence was done.

On the other hand when there is conspiracy for illegal act such to criminal liability arises only when something was done in consequence of such conspiracy.

**Imp.\*** : To convict a person for criminal conspiracy it is essential to prove that both two or more than two named person, agreement to commit offence took place.

 It is not easy to do so, because basically they are underground activities (mental state) and clear evidence of such activities it not easy.

* Person participating in conspiracy are called co-conspirator for each other and other and section 10 of Indian ev. Act clearly says anything said or done by co-conspirators is used against other co-conspirators and relevant against them.

Q. It is necessary that person participating in conspiracy must also participate in offence also.

Ans. No. Participation is not a mandatory condition. Any other person may be hired by them to commit offence.

* There may be different state of criminal liable, it is not necessary to prove that he participated at all stages of conspiracy.

 A,B,C plans to wages war against GOI.

Q. What is criminal Conspiracy? (500 words)

Ans. 120B punishment for criminal conspiracy: if criminal conspiracy is commited to offence punishable with death, important a life, ore rigorous imprisonment for term of 2 year upwards shall where.

* If there is provision for punishment in penal code conspirator to be punished in that manner only.
* If there is no specific provision in penal code. Than person participating in conspiracy to be punished as abettor.
* Whoever is party to criminal conspiracy for offence punishment best than 2 years. Than person participating in such conspiracy be punished with 6 month imp.
* X-Y-Z because offence is against member of international community’s (Go India)

**Section 121:** Waging war - against govt. of India: Insurrection against GOI is waging war against india such insumed must be armed insurrection. When war is both two or more countries provision of law applicable.

When people of country try to overawe the legally established government than such activities are given two name in eye of law.

1. Insurgency
2. Belligerency

So waging war means state of belligerency against govt. of India which is not possible, without armed insunection.

* There must be proper no apperson. However activities take place at diff. time & venue. (see Illustration –b-of sec 6- ind. Ev.act).
* When there is objection of such government. Through words and publication it is called as sedition.

When viotence is used by insurgents, they are labeled as belligerents. Degree of viotence must be high.

To use viotence against legally established govt. is offence of sedition,such person can be prosecuted and punished under code.

* Abetment and attempt of war are also made offence in section 121 of IPC.

**Section 122:** Collecting Arm & Weapons: Preparation generally is not offence.

Collection of means to commit offence is called preparation generally preparation to commit offence is not. Such preparation is offence when it is specifically declared as offence for sec 122 preparation to wage war against govt. of India is declared as offence.

Section 291: It deals with offence of dacoity preparation to commit docoity is also offence.

Section 122whoever prepares to wage war with intension of war shall be punished with imp for life.

**Section 124A:** Sedition: In every democracy people have right to criticize policies of govt. we have parliamentary democracy in India and in every parliamentary democracy opposition leaders enjoys the fair citizens of policies of ruling party leaders.

 If any wrong step is taken by ruling party opp. Parties opposes it apart from this, every citizen of india enjoy freedom of press, information, expression, circulation etc. they may opposite step of govt, steps of administration.

* There freedoms are not of absolute nature because under clause of article (19) state enjoys power to impose reasonable restriction on these freedom.

Q. What are grounds state enjoys power to impose reasonable restriction on, speech, expression and freedom of press on ground of safety of nation, soverageinity. (against these provision)

* If one does so, he is doing something which may be covered under secion 124 A of penal code. Which is offence of section.

Q. what is sedition?

Ans. Whoever either by words, written, signs, or any other modes of expression. (includes everything) offence of sedition is not through viotence it is through expression. Such govt. is legally established govt. of India.

Q. What is lawfully established govt which is constituted according to constitution of India, within territory of India. Any of govt which is illegally obtain power by viotence of provision of constitution is not known as unlawful govt.

 If such govt. is not lawful, then act to remain such govt. is not sedition.

* When the people of country does unlawful acts then to every govt enjoys power to sub event such govt activities and it is enjoyed even if given by supreme law or not.
1. Which publication amounts to sedition?

Ans. Creating and spreading hatred contempt, or disaffection than it is offence of sedition for offence of sedition, any person (whether or not India) be punished.

 Law relating to prevent detention, is applicable to national as well as outsides also.

Q. What is sedition?

Ans. Creating or spreading, hatred content or disaffection against legally established GOI through oral wards or any media of expression is sedition.

* Whether offence constituted or not : to decide whether any material one has to see what are wards and contents, what is intention, what was total impact whether it is disaffection, hatred, to decide the cases.
* Explanation I: Disloyalty : it is to be expected from every national to be loyal.

 That’s why disloyalty against country may amount to sedition.

* Explanation II : if policies of govt. are criticized in fair manner. They are not known as sedition.
* Explanation III: Whether order of govt. be opposed they can be opposed. If done by with fair criticism of govt or administration not sedition it done by lawful means.

**Section 141:** Unlawful Assembly: Assembly where several person come together at a place they are known as assembly.

Assembly is fundamental right and it is part and parvel of democratic system. But constitute says;

(1) to assemble with peaceably 1 without arms. So if an assembly is peaceable and is no violation of law for time being in force. Than assembly in known as lawful.

(2) Right or freedom of assembly is not absolute, it is a limited right.

* When limitation can be imposed there is diff. both Indian Law and American Law.

In America, clear and present danger rule is applicable, we have not adopted this advance steps to be taken before happening of such assembly. (Permission of Adm must be taken)

* Assembly is constituted by at list five person. The basic feature of assembly is that member of such assembly has common object.
* Common Object: How it is differ from common intention (34)
* What is prohibited is method with which you want to held such assembly. Five or more person assemble to do act which is mentioned in..

Section 141: Unlawful assembly which assembly is unlawful? (20 words item)

Ans. 1. When at list 5 persons

 2. Assembly

1. Common object
2. Actum described or prescribed in section 141.
* Unlawful assembly of five or more persons with common object to do anything mentioned in section 141 of IPC is unlawful assembly or in otherwords assembly of five or more pen with can.
* What is declared as offence is assembly itself, if members of unlawful assembly commit any offence thered is additional liability (if any thin done in furtherance) Members of unlawful assembly are liable.
* Explanation: It ius not essential that a assembly is unlawful right of beginning- it is possible that when assembly begins, it was lawful and hence no liability but such assembly may later on become unlawful assembly.
* Advance steps to be taken by adm. To prevent unlawful assembly.

**Section 142:** There must be knowledge to person that assembly is unlawful. A person who reaches there innocently he does not become member of unlawful axenble, because he has no knowledge of factum of unlawful assembly.

Q. When does he become member?

Ans. When he comes to known that it is unlawful assembly, and still he continues to be in that assembly and remain in it, he is deemed to be member of such assembly. If they do not withdraws and continue he is declared by member. (The basis of liability is presence of a person). It is not essential that he takes participation there, mere his presence is suffient)

 If it is proved that unlawful assembly is by five named person, what is essential is that when offence done there was at list 5 persons.

**Section 143:** Prescribed punishment every member of unlawful assembly shall be punished with important upto 6 month, fine or both and if accng. To section 144 &145 if member of assembly assembled with weapon 2 years.

**Section 146:** Indicates- what is Rioting?

Ans: when members of unlawful assembly for achieving purpose of common abject uses force or viotence . Than it is known as Rioting for which section 147. Prescribes punishment. It is not necessary that unlawful assembly.

**Section 159:** Affray: when two or more person fighting in public place. Disturb public peace they are said to have commited offence of affray.

**Section 160:** Diff.-beth-Rioting and Affray:

1. In Affray minimum two persons and needed in rioting 5 person.
2. In case of rioting because there is existence of unlawful assembly there is common object, but in case of affray there is no such object.
3. In Rioting force or viotence is against others it is Indicative of Joint effect. But in case of affray the persons use force against each other.
4. In case of rioting, use of force or viotence is necessary, but it is not essential for affray fighting may be otherwise also.
5. Offence of rioting may be commited in a public place or put place, but affray of rioting is commited at only public place.
6. In case of Rioting rule of constructive liability is applied, which is not applicable in case of affray.
7. Result of Rioting is Injury, to people or property as case may be, whereas result of affray is disturbance of public peace.

Section 149: Lays down Rule of constructive liability and basis of such liability is presence and participation. Section 149, if any offence is commited by any member or members in furtherance of common object there of than every member of unlawful assembly is liable for that offence.

1. Gravity of offence increases.
2. Gravity of Injury increases..
3. Decision of Commiting offence is not taken easily.
4. Everyone assisted by other.
5. It is difficult to prove as what role was played by each of them. That’s why constructive liability. It is not essential that for furtherance of common object every member must participate, what makes him liable is his presence in unlawful assembly and for purpose of presence meeting of mind is not essential, so far as extent of liability is concerned because unlawful assembly it self offence, membership creates criminal liability. Moment assembly is made offence, complete, section 149 moves ahead. It says what happened when something is done by any member of such assembly.

**Two Things:**

1. If act is done by common object in its further by member of unlawful assembly than. Every member of unlawful assembly is liable for then offence.
2. When some addition act is done furtherance of common object. Members of assembly are liable even, if it could be for seen at time of assembly, if such act consequence can be predicted.
3. If additional act is done beyond for assigners, than for such act only those person will be liable who did that act and not all members of unlawful assembly.

**Section 34 & 149:**

1. When section 34 lays down rule of Joint liability whereas essence of section 149 is constructive liable.
2. Basis of liability is section 34 is participation in offence. Whereas basis of liability in section 149 is presence at spot.
3. Section 34 lays down rule of common intention and common intention is interpreted only when there is meeting of mind only. (consenus)

Section 149 talk of common object and for such common object meeting of mind is not mandatory element.

What is suffient knowledge?

1. Section 34 does not constitutes offence itself it simply lays down rule of liability. Whereas 149 begins with the offence because unlawful assembly is itself offence.
2. To apply rule under section 34 minimum no of person is 2 whereas in rule under 149 constituted by 5 person.

**Section 191:** Giving false evidence: Two thing are there.

1. False Evidence giving.
2. Fabricating false evidence.

Section 191 (1) Giving false Evidence: Question of giving false evidence is arises when person is bound to make true statement or true declaration.

Q. where he is bound to say true thing?

Ans. When a person is bound to make true statement in a judicial proceeding or before public officer. When a person bound in such manner and he makes false declaration or statement than it is said that he gives false evidence.

* The term making means that such person knows such statement to be false, he believes it is not true. Then also he makes declaration, than it is said he gives false evidence.
* If a person believe something to be true, and in good faith makes statement in such belief,, than even if it is not true, he do not gives false evidence.
* It is not material whether legal proceeding instituted be just or not. Offence is constituted as soon as it is made (false evidence)
* And law under section 191 is also applicable to interprets also who are bound to certify that translation. He has to certify that it is interpretation is true.

Similarly, south Indian appears court, whoever translates any statement made by witness he has to certify that interpretation is ture.

If one makes anything true knowing it is not true. Than it is said that u gives false evidence.

If a person not known anything about any fact yet makes statement, even if the statement is true, it is said he gives false evidence.

* Explanation-I: Making statement means oral statement or other wise (writing). As per Exp-I Statement may be oral or written.
* Explanation-II: Term attention means signature of atlist 2 persons. Who has seen person executing document.
* When a person sign a document as attesting witness and the do not know who is party. It is said that he gives false evidence.
* Attesting witness must know who is party to document; if he gives false evidence without if it not knowing.
* Person do clearing must be identified without knowing his identity. It is said he gives false evidence. Offence of giving false evidence. Completes when it is in Judicial Statement and person giving it is lawfully bound to make statement.

When any person appear before court on oath he is bound by law to truth.

**Illustration–I:** Plaintiff gives sues against defendant, for 1000 Rs. which is Justified, Plaintiff witness says that defendant makes admission before him.

**Illustration- II:** There is question before court that where particulars signature is of X or Not.

**Illustration-III:** Question is whether. The signature is of X or not, one witness appears before court in good faith believes such statement is of X. it is not false evidence. Even if such thing is not true, he do not gives false evidence.

**Illustration-IV:** Interpreter or Translator gives or certifies that it is not true he gives false evidence.

**Section 192:** Fabricating false evidence: It means to make create, bring into existence anything.

Part (1) How false evidence fabricated?

In any of following ways.

**Illustration-I :** To bring any circumstance into existence.

**Illustration-II:** By making entry in a book to be used in court of Justice.

**Illustration-III:** Making false document for.

**Part (2):** Such fabrication is mad with but with particular intention that such evidence may be produced before court of Justice or public officer, and wrong opinion may be drawn on basis thereof relating to material fact of case, said that false evidence fabricated.

**Section 193:** Punishment Giving false evidence: fabricating false evidence.

Q. What is meaning of judicial proceeding?

Ans. Term judicial proceeding includes following.

1. Trial before a court material.
2. Proceeding conducted by mgst. Magistrate under section 209 crpc. Whether committal is made or not is judicial proceeding.

**Explanation 3:** Any Investigation: In any judicial proceeding is also Judicial proceeding (issuing of commission). Whether such proceeding is in court or not do not matter.

**Section 194:** Where false evidence is fabricated in relation to false death punished with importance for life, term extends to 10 years. If innocent person be executed death penalty.

**Section 195:** Other than Death.

**Section 209:** Whoever makes false claim in court of Justice annoyan. If a person institute false civil claim with intention to cause. Annoy or Injury shall be punished for 2 years and liable to fine.

**Section 211:** False Institution of criminal proceeding with intent to injury or annoy is called shall be punished with 2 years.

Remedy: to accused is civil suit can be institute maliaous prosecution danages.